

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 413
TRANSGENIC AND NONNATIVE ORGANISMS

324.41301 Definitions; possession of live organism.

Sec. 41301. (1) As used in this part:

(a) "Genetically engineered" refers to an organism whose genome, chromosomal or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques, or the progeny of such an organism.

(b) "Introduce", with reference to an organism, means to knowingly and willfully stock, place, plant, release, or allow the release of the organism in this state at any specific location where the organism is not already naturalized.

(c) "Prohibited species", subject to section 41302, means any of the following:

(i) Any of the following prohibited aquatic plant species, including a hybrid or genetically engineered variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant:

- (A) African oxygen weed (*Lagarosiphon major*).
- (B) Brazilian elodea (*Egeria densa*).
- (C) Cyllindro (*Cylindrospermopsis raciborskii*).
- (D) European frogbit (*Hydrocharis morsus-ranae*).
- (E) Fanwort (*Cabomba caroliniana*).
- (F) Giant hogweed (*Heracleum mantegazzianum*).
- (G) Giant salvinia (*Salvinia molesta*, *auriculata*, *biloba*, or *herzogii*).
- (H) Hydrilla (*Hydrilla verticillata*).
- (I) Japanese knotweed (*Fallopia japonica*).
- (J) Parrot's feather (*Myriophyllum aquaticum*).
- (K) Starry stonewort (*Nitellopsis obtusa*).
- (L) Water chestnut (*Trapa natans*).
- (M) Yellow floating heart (*Nymphoides peltata*).

(ii) The following prohibited bird species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant: Eurasian collared dove (*Streptopelia decaocto*).

(iii) The following prohibited crustacean species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant: rusty crayfish (*Orconectes rusticus*).

(iv) Any of the following prohibited fish species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Bighead carp (*Hypophthalmichthys nobilis*).
- (B) Bitterling (*Rhodeus sericeus*).
- (C) Black carp (*Mylopharyngodon piceus*).
- (D) Eurasian ruffe (*Gymnocephalus cernuus*).
- (E) Grass carp (*Ctenopharyngodon idellus*).
- (F) Ide (*Leuciscus idus*).
- (G) Japanese weatherfish (*Misgurnus anguillicaudatus*).
- (H) Round goby (*Neogobius melanostomus*).
- (I) Rudd (*Scardinius erythrophthalmus*).
- (J) Silver carp (*Hypophthalmichthys molitrix*).
- (K) A fish of the snakehead family (family *Channidae*).
- (L) Tench (*Tinca tinca*).
- (M) Tubenose goby (*Proterorhinus marmoratus*).

(v) Any of the following prohibited insect species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Asian longhorned beetle (*Anoplophora glabripennis*).
- (B) Emerald ash borer (*Agrilus planipennis*).

(vi) The following prohibited mammal species, including a hybrid or genetically engineered variant: nutria (*Myocastor coypus*).

(vii) Any of the following prohibited mollusk species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Brown garden snail (*Helix aspersa*).
- (B) Carthusian snail (*Monacha cartusiana*).
- (C) Giant African snail (*Achatina fulica*).
- (D) Girdled snail (*Hygromia cinctella*).
- (E) Heath snail (*Xerolenta obvia*).
- (F) Wrinkled dune snail (*Candidula intersecta*).

(d) "Recombinant nucleic acid techniques" means laboratory techniques through which genetic material is isolated and manipulated in vitro and then inserted into an organism.

(e) "Restricted species", subject to section 41302, means any of the following:

(i) Any of the following restricted aquatic plant species, including a hybrid or genetically engineered variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant:

- (A) Curly leaf pondweed (*Potamogeton crispus*).
- (B) Eurasian watermilfoil (*Myriophyllum spicatum*).
- (C) Flowering rush (*Butomus umbellatus*).
- (D) Phragmites or common reed (*Phragmites australis*).

(E) Purple loosestrife (*Lythrum salicaria*), except that cultivars of purple loosestrife developed and recognized to be sterile and approved by the director of the department of agriculture under section 16a of the insect pest and plant disease act, 1931 PA 189, MCL 286.216a, are not a restricted species.

(ii) Any of the following restricted mollusk species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Quagga mussel (*Dreissena bugensis*).
- (B) Zebra mussel (*Dreissena polymorpha*).

(2) For the purposes of this part:

(a) A person is not considered to possess a live organism simply because the organism is present on land or in waters owned by that person unless the person has knowingly introduced that live organism on that land or in those waters.

(b) A person is not considered to possess a live organism if the organism was obtained from the environment and the person only possesses the organism at the specific location at which it was obtained from the environment.

(c) A person is not considered to possess a live organism if the possession is for the purpose of promptly destroying the organism.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 77, Imd. Eff. July 19, 2005;—Am. 2009, Act 51, Eff. Sept. 21, 2009.

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324.41302 Adding or deleting from list of prohibited species or restricted species; consultation; procedure; determination.

Sec. 41302. (1) The commission of natural resources may by order add to or delete from the list of prohibited species or restricted species under section 41301 any species other than an insect or plant species. Before issuing an order under this subsection, the commission of natural resources shall consult with the department of agriculture. After the consultation, and at least 30 days before the commission of natural resources issues the order, the department of natural resources shall post a copy of the proposed order on the department of natural resources' website and shall submit a copy of the proposed order to all of the following:

(a) The legislature.

(b) The standing committees of the senate and house of representatives with primary responsibility for any of the following:

(i) Agricultural issues.

(ii) Environmental issues.

(iii) Natural resources issues.

(2) The commission of agriculture may by order add to or delete from the list of prohibited species or restricted species under section 41301 any insect or plant species. Before issuing an order under this subsection, the commission of agriculture shall consult with the department of natural resources. After the consultation, and at least 30 days before the commission of agriculture issues the order, the department of agriculture shall post a copy of the proposed order on the department of agriculture's website and shall submit

a copy of the proposed order to all of the following:

(a) The legislature.

(b) The standing committees of the senate and house of representatives with primary responsibility for any of the following:

(i) Agricultural issues.

(ii) Environmental issues.

(iii) Natural resources issues.

(3) The commission of natural resources or the commission of agriculture, as applicable, shall list a species as a prohibited species or restricted species if the commission of natural resources or commission of agriculture, respectively, determines the following:

(a) For a prohibited species, all of the following requirements are met:

(i) The organism is not native to this state.

(ii) The organism is not naturalized in this state or, if naturalized, is not widely distributed in this state.

(iii) One or more of the following apply:

(A) The organism has the potential to harm human health or to severely harm natural, agricultural, or silvicultural resources.

(B) Effective management or control techniques for the organism are not available.

(b) For a restricted species, all of the following requirements are met:

(i) The organism is not native to this state.

(ii) The organism is naturalized and widely distributed in this state.

(iii) One or more of the following apply:

(A) The organism has the potential to harm human health or to harm natural, agricultural, or silvicultural resources.

(B) Effective management or control techniques for the organism are available.

History: Add. 2009, Act 52, Eff. Sept. 21, 2009.

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Popular name: NREPA

324.41303 Possession of live prohibited or restricted organism; prohibition; exceptions; notification of location where found.

Sec. 41303. (1) Subject to subsection (2), a person shall not knowingly possess a live organism if the organism is a prohibited species or restricted species, except under 1 or more of the following circumstances:

(a) The person intends to present a specimen of the prohibited species or restricted species, for identification or similar purposes, to a person who is a certified applicator or registered applicator under part 83, to a public or private institution of higher education, or to the department of natural resources, the department of agriculture, or any other state, local, or federal agency with responsibility for the environment, natural resources, or agriculture.

(b) The person has been presented with a specimen of a prohibited species or restricted species for identification or similar purposes under subdivision (a).

(c) The person possesses the prohibited species or restricted species in conjunction with otherwise lawful activity to eradicate or control the prohibited species or restricted species.

(d) If the prohibited species or restricted species is not an insect or plant species, the possession is pursuant to a permit issued for education or research purposes by the department of natural resources under section 41306. If the prohibited species or restricted species is an insect or plant species, the possession is pursuant to a permit issued for education or research purposes by the department of agriculture under section 41306 or by the United States department of agriculture.

(2) A person described in subsection (1)(b) or (c) shall notify the department of natural resources, the department of agriculture, or the department of environmental quality if the prohibited species or restricted species was found at a location where it was not previously known to be present.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 78, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41305 Introduction of prohibited or restricted species, or genetically engineered or nonnative aquatic plant, bird, crustacean, fish, mammal, or mollusk; exceptions.

Sec. 41305. A person shall not introduce a prohibited species, a restricted species, or a genetically engineered or nonnative aquatic plant, bird, crustacean, fish, mammal, or mollusk unless the introduction is

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authorized by 1 of the following, as applicable:

- (a) For a fish, by a permit issued by the department of natural resources under section 48735.
- (b) For an insect or plant, by a permit issued by the department of agriculture under section 41306.
- (c) For any other species, by a permit issued by the department of natural resources under section 41306.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 79, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

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Popular name: NREPA

324.41306 Permit; application; fee; approval; revocation; modification; hearing; administration; enforcement.

Sec. 41306. (1) A person shall apply for a permit that section 41303 or 41305 describes as being issued by the department of natural resources or the department of agriculture under this section on a form developed by the department of natural resources or the department of agriculture, respectively. The application shall be accompanied by a fee based on the cost of administering this part. The department of natural resources or the department of agriculture, respectively, shall either grant an administratively complete application and issue a permit or deny the application.

(2) In determining whether to grant or deny an application for a permit for introduction of a genetically engineered organism required by section 41305, the department of natural resources or the department of agriculture, as applicable, shall consider whether any application for a federal permit or approval for the genetically engineered organism has been granted or denied.

(3) The department of natural resources or the department of agriculture may revoke or modify a permit issued by the department of natural resources or the department of agriculture, respectively, under subsection (1) after providing an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) The department of natural resources shall administer and enforce this part, except with respect to insect and plant species. The department of agriculture shall administer and enforce this part with respect to insect or plant species. In addition, any peace officer may enforce the criminal provisions of this part.

History: Add. 2005, Act 79, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41307 Rules.

Sec. 41307. The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to implement this part.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004.

Popular name: Act 451

Popular name: NREPA

324.41309 Violation; penalties; liability for damages to natural resources; exceptions.

Sec. 41309. (1) A person who violates section 41303(2) is subject to a civil fine of not more than \$100.00.

(2) A person who violates section 41303(1), or a condition of a permit issued under this part, with respect to a restricted species is subject to a civil fine of not more than \$5,000.00. A person who violates section 41303(1), or a condition of a permit issued under this part, with respect to a prohibited species is subject to a civil fine of not more than \$10,000.00.

(3) A person who violates section 41303(1) knowing the possession is unlawful or who willfully or in a grossly negligent manner violates a condition of a permit issued under this part is guilty as follows:

(a) For a violation involving a restricted species, the person is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than \$1,000.00 or more than \$10,000.00.

(b) For a violation involving a prohibited species, the person is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$2,000.00 or more than \$20,000.00.

(4) A person who, with intent to damage natural, agricultural, or silvicultural resources or human health:

(a) Violates section 41303(1) with respect to a restricted species or possesses a nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$1,000.00 or more than \$250,000.00.

(b) Violates section 41303(1) with respect to a prohibited species or possesses a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk is guilty of a felony and may be imprisoned for not more than 4 years and shall be fined not less than \$2,000.00 or more than \$500,000.00.

(5) A person who sells or offers to sell a restricted species is subject to a civil fine of not less than \$1,000.00 or more than \$10,000.00. A person who sells or offers to sell a prohibited species is subject to a civil fine of not less than \$2,000.00 or more than \$20,000.00.

(6) A person who violates section 41305 is guilty as follows:

(a) For a violation involving a restricted species or a nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a misdemeanor and may be imprisoned for not more than 6 months and shall be fined not less than \$500.00 or more than \$5,000.00.

(b) For a violation involving a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than \$1,000.00 or more than \$10,000.00.

(7) A person who violates section 41305 with respect to a restricted species or nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk and who knows or should know the identity of the restricted species or that the organism, whether a restricted species or other aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, is nonnative is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than \$1,000.00 or more than \$10,000.00.

(8) A person who violates section 41305 with respect to a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk and who knows or should know the identity of the prohibited species or that the aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk is genetically engineered, respectively, is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$2,000.00 or more than \$20,000.00.

(9) A person who violates section 41305 knowing the introduction is unlawful, is guilty as follows:

(a) For a violation involving a restricted species or nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$1,000.00 or more than \$250,000.00.

(b) For a violation involving a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 4 years and shall be fined not less than \$2,000.00 or more than \$500,000.00.

(10) A person who, with intent to damage natural, agricultural, or silvicultural resources or human health, violates section 41305 is guilty as follows:

(a) For a violation involving a restricted species or nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 3 years and shall be fined not less than \$1,000.00 or more than \$500,000.00.

(b) For a violation involving a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 5 years and shall be fined not less than \$2,000.00 or more than \$1,000,000.00.

(11) In addition to any other civil or criminal sanction imposed under this section, a person who violates this part is liable for any damages to natural resources resulting from the violation, including, but not limited to, costs incurred to prevent or minimize such damages.

(12) This part does not apply to activities authorized under the Michigan aquaculture development act, 1996 PA 199, MCL 286.871 to 286.884.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 76, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

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Popular name: NREPA

324.41311 Invasive species fund; creation; disposition of funds; money remaining in fund; expenditures; purposes.

Sec. 41311. (1) The invasive species fund is created within the state treasury.

(2) The department of natural resources and the department of agriculture shall forward to the state treasurer and the state treasurer shall deposit into the fund civil fines collected under section 41309 and permit fees collected under section 41306. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of natural resources and the department of agriculture shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) The administration of this part, consistent with section 41306(4).

(b) Public education about preventing the introduction of, controlling, or eradicating prohibited species, restricted species, and other nonnative species and genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, and mollusks.

History: Add. 2005, Act 80, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41313 Providing information on website; requirements.

Sec. 41313. The department of natural resources and the department of agriculture shall each provide all of the following information on its website:

- (a) Information on the requirements of this part applicable to the public.
- (b) The penalties for violating the requirements of this part.
- (c) A list of prohibited species and restricted species along with a description and a photograph or drawing of each of those species.
- (d) Each annual report of the department under section 41323, for not less than 3 years after its issuance.

History: Add. 2005, Act 80, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41321 Repealed. 2009, Act 51, Eff. Sept. 21, 2009.

Compiler's note: The repealed section pertained to the invasive species advisory council.

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Popular name: NREPA

324.41323 Duties of department.

Sec. 41323. (1) The department of natural resources shall do all of the following:

- (a) By March 1 of each year, submit to the governor and the legislature a report that makes recommendations on all of the following:
 - (i) Additions to or deletions from the classes of genetically engineered or nonnative organisms covered by this part.
 - (ii) The status of various prohibited species and other problematic invasive species in this state, including, but not limited to, a list of infested waterbodies by species.
 - (iii) Preventing the introduction of and controlling or eradicating invasive species or genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, or mollusks.
 - (iv) Restoration or remediation of habitats or species damaged by invasive species or genetically engineered organisms.
 - (v) Prioritizing efforts to prevent violations of and otherwise further the purposes of this part.
 - (vi) The specific areas of responsibility for various state departments under this part and the sharing of information on permits under this part among responsible state departments.
 - (vii) Educating citizens about their responsibilities under this part and their role in preventing the introduction of and controlling or eradicating prohibited species, restricted species, invasive species, and genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, or mollusks.
 - (viii) Simplifying citizen access to state government for compliance with this part.
 - (ix) Legislation and funding to carry out the recommendations of the department of natural resources and otherwise further the purposes of this part.
 - (x) Other matters that the department of natural resources considers pertinent to the purposes of this part.
- (b) Establish criteria for identifying waterbodies infested by prohibited species.
- (c) Monitor and promote efforts to rescind the exemption under 40 CFR 122.3(a) for ballast water discharges.

(2) The department of natural resources shall carry out its reporting and other duties under this section in cooperation with the aquatic nuisance species council created under Executive Order No. 2002-21 and the department of agriculture.

History: Add. 2005, Act 75, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41325 Boat, boating equipment, or boat trailer with aquatic plant attached; placement in

state waters prohibited; order to remove aquatic plants; notice; posting; violation as civil infraction; penalty; definitions.

Sec. 41325. (1) A person shall not place a boat, boating equipment, or boat trailer in the waters of this state if the boat, boating equipment, or boat trailer has an aquatic plant attached.

(2) A law enforcement officer may order the owner or operator of a boat, boating equipment, or boat trailer to remove aquatic plants from the boat, boating equipment, or boat trailer. The owner or operator shall obey such an order.

(3) The department shall prepare a notice that contains a summary of subsections (1), (2), (4), (5), and (6) and shall make copies of the notice available to owners of public boating access sites. The department shall include the notice in relevant department publications and post the notice on its website.

(4) The owner of a public boating access site shall post and maintain the notice described in subsection (3).

(5) A person who violates subsection (1), (2), or (4) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

(6) As used in this section:

(a) "Aquatic plant" means a submergent, emergent, or floating-leaf plant or a fragment or seed thereof. Aquatic plant does not include wild rice (*Zizania aquatica*).

(b) "Boat" means a vessel as defined in section 80104, and "boating" has a corresponding meaning.

History: Add. 2009, Act 91, Imd. Eff. Sept. 15, 2009.

Popular name: Act 451

Compiler's note: NREPA